

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ISRAEL TEMESGEN,

Plaintiff,

-against-

JOHN D'AGUSTO,

Defendants.

23-CV-2048 (LTS)

ORDER

LAURA TAYLOR SWAIN, Chief United States District Judge:

By order dated October 16, 2023, the Court dismissed this action for lack of subject matter jurisdiction and for failure to state a claim, but granted Plaintiff sixty days' leave to amend his complaint to allege facts demonstrating that the court has subject matter jurisdiction of his claims. (ECF No. 4.) Plaintiff did not file an amended complaint, and by civil judgment dated January 2, 2024, the Court dismissed the action for lack of subject matter jurisdiction, Fed. R. Civ. P. 12(h)(3), and for failure to state a claim, 28 U.S.C. § 1915(e)(2)(B)(ii); the civil judgment was entered on the court's docket on January 3, 2024. (ECF No. 5.) On February 1, 2024, Plaintiff filed a notice of appeal, (ECF No. 6), and a motion for extension of time to file a notice of appeal, (ECF No. 7.) For the reasons set forth below, Plaintiff's motion for an extension of time to file a notice of appeal (ECF No. 7) is denied as unnecessary.

DISCUSSION

Under Fed. R. App. P. 4(a)(1)(A), a notice of appeal in a civil case must be filed within 30 days after entry of judgment. "[T]he taking of an appeal within the prescribed time is mandatory and jurisdictional." *In re WorldCom, Inc.*, 708 F.3d 327, 329 (2d Cir. 2013) (citation and internal quotation marks omitted). Because Plaintiff's time to file a notice of appeal had not

expired, a motion for extension of time to appeal was unnecessary. Accordingly, Plaintiff's request for an extension of time to appeal is denied as unnecessary.

CONCLUSION

Plaintiff's request for an extension of time to file a notice of appeal (ECF No. 7) is denied as unnecessary.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: February 12, 2024
New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN
Chief United States District Judge